IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 42 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DOSA KALA DECEASED THROUGH LEGAL HEIRS RAMJI DADA

Versus

DARBAR H DANSINHJI

Appearance:

1. Special Civil Application No. 42 of 1983

MR SURESH M SHAH for Petition5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/4A-3/4C,3/5-4/2,4/3,5,5/2-6/A,6 ..... for Respondent No. 1,3-3/1,3/1B,3/3/B-15,25-26,28,29/1,29/2B-29/2C,32-33

Respondent No. 1/1

RULE SERVED for Respondent No. 1/2-2,3/1A,3/3,13/A,16-19,20/A-24,27 30-31,34-35

UNSERVED-EXPIRED (R) for Respondent No. 3/1C-3/2,4/4-4/5,7/C,11/A-1

MR BR KYADA for Respondent No. 3/4D,5/1

MR MB KYADA for Respondent No. 3/4D-5/1

RULE UNSERVED for Respondent No. 4/2A-4/2B,6/A,8-9,10/A-10/B,12,13/ -15,25-26,28,29/1,29/2B-29/2C,32-33

MR KG VAKHARIA for Respondent No. 7/A-7/B,7/D

SERVED BY AFFIX.-(R) for Respondent No. 29/2A

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 10/04/2003

ORAL JUDGEMENT

The short facts of the case are that the petitioners are the tenants of the respondent No.1. There is no dispute on the point that the subject matter of the land is governed by the provisions of Saurashtra Land Reforms Act, 1951 (hereinafter referred to as "the Act"). As per the scheme of the Act the girasdar would be entitled to 84 acres of land in all including the land which is in his possession for his personal cultivation. If the land which is in his possession for personal cultivation is less than 84 acres the land shall be taken from the holding of the tenant of the said girasdar subject to condition that the holding of the concerned tenant would not less than the economic holding which is of 28 acres. There is also no dispute on the point that the respondent No.1-girasdar would be entitled to have 84 acres of land as per the provisions of the Act.

2. It appears that initially the proceedings under the Act were concluded at the level of Mamalatdar and thereafter the Dy.Collector and thereafter before the Gujarat Revenue Tribunal ("Tribunal" for short) and the respondent No.1-girasdar was allotted various areas of land details whereof are mentioned in the statement comprising of four blocks. The block No.1 comprises of the land admeasuring 12 acres and 37 gunthas, block No.2 comprises of land admeasuring 18 acres, block No.3 comprises of land admeasuring 30 acres and block No.4 comprises of 7 acres and 36 gunthas. After the decision of the tribunal in Revision Application No.264/69, it appears that Spl.C.A.No.880/73 came to be filed by some of the tenants, namely, Jivraj Ramji and others

challenging the legality and validity of the order passed by the tribunal. It further appears that in the said petition ultimately as per the judgment, dated 7.3.1977 this court confirmed the allotment of the land to the respondent No.1 so far as it related to Block Nos 3 & 4. However, so far as Block Nos 1 & 2 are concerned, it was found by the court that some of the heirs and legal representatives of Anand Mava and Ramji Vala were not brought on record and they were not heard. Therefore, as per the said judgment this court ultimately passed the following directions:

> "The result is that this petition is allowed.The order of the tribunal so far as it allotted land of Block Nos I & II to respondent No.1-Girasdar is set aside and the matter is sent back to the tribunal for deciding afresh about the allotment of the land after service of notice to all the tenants and particularly to the tenants included in Block Nos I and II and if, after hearing the parties concerned, the tribunal thinks fit to disturb these blocks it can do so after hearing the parties affected.It is further directed that till the fresh allotment is made by the tribunal, after hearing the parties concerned, it should not implement the directions given in para 7 and 8 of its order without prejudice to the right of the respondent No.1-Girasdar to recover the land involved in Block Nos III and IV. The petitioners shall pay costs to respondent No.1 of this petition."

3. It appears that after the aforesaid judgment , the tribunal considered the matter pursuant to the aforesaid remand order and found that the revision qua the concerned heirs and legal representatives stood abated and it was also alternatively found by the tribunal that in any event the heirs and legal representatives were duly represented by the learned advocate Shri B.R.Patel and therefore even if the matter is not treated as abated it would not be necessary to differ with the finding of the earlier member of the tribunal in Revision Application No.264/79 on 30.9.1973. The learned Tribunal, thereafter, maintained the allotment of land of four blocks which was earlier ordered as per the decision dated 30.9.1973 and further directed the Mamalatdar to handover the possession to the applicant-girasdar of the land which is allotted to him as per the decision. The said order of the tribunal, dated 4.10.1982 is under challenge in this petition.

4. Mr.S.M.Shah, Ld.counsel appearing on behalf of the petitioner has mainly submitted, interalia, that as per the averments made in the petition the land is allotted to the respondent No.1 and the respondent No.1 has already received the possession of land admeasuring 37 acres and 36 gunthas of Block Nos 3 & 4. He further submitted that there is no challenge to the allotment of land admeasuring 3 acres and 04 gunthas and 2 acres 33 gunthas by the heirs and legal representatives of Lala Sava and Ramji Vala and therefore if such area is added the aforesaid land of 37 acres and 36 gunthas of block Nos 3 & 4 it would come to total undisputed land available which would be 43 acres and 33 gunthas as the land available pursuant to the order of the tribunal for which there is no dispute. Mr.Shah further submitted that as it is recorded in the order of the tribunal and it is rather admitted position that the land admeasuring 6 acres 08 gunthas was very much there with the respondent No.1 for personal cultivation and in addition thereto there was land admeasuring 8 acres 29 gunthas which was received by the respondent No.1 from one another tenant Anand Devraj. He further submitted that as per the averments made in the petition on internal page 12 one another opponent Devji Vela as per his consent has surrendered and handed over the possession of land admeasuring 17 acres 1 guntha. Therefore, Mr.Shah submitted that if the aforesaid holding of the respondent No.1 is taken into consideration it would transpire that the respondent No.1 has received the land admeasuring 31 acres 38 gunthas in addition to the aforesaid undisputed land allotted comprising of Block Nos 3 & 4 and not part of block No.1. In the submission of Mr.Shah the total of these holdings of respondent No.1 would go to show that he has already received the land admeasuring 75 acres 31 gunthas and if the limit of 84 acres are taken into consideration the respondent No.1 would at the most be entitled to balance of land admeasuring 8 acres and 09 gunthas whereas the land which is allotted by the tribunal from the petitioners if taken into consideration the land which is required to be surrendered by the petitioners comes to 24 acres 40 gunthas or 25 acres. Therefore, he submitted that if the order of the tribunal is allowed to operate the resultant effect would be that the respondent No.1-girasdar will get the land exceeding 84 acres which would frustrate the purpose of the Act and in any event the tribunal could not have missed the aforesaid important aspects of the case. Mr.Shah also declared before the court that if the holding of respondent No.1 is considered as per the aforesaid calculation, the petitioners who are heirs and legal

representatives of Dosa Kala, Anand Mava, Natha Bhura, Govind Jetha will have to surrender land admeasuring 8 acres 09 gunthas only and the petitioners have no objection in surrendering the said land proportionately or otherwise subject to condition that the holding is not going below the economic holding. Mr.Shah also submitted that the tribunal has not touched the merits of the matter and no reasons are recorded for considering the aforesaid aspects or for negativing the same and therefore the order of the tribunal deserves to be quashed.

5. On behalf of respondent No.1, who is rather the contesting respondent, Ld.Counsel Mr.M.C.Bhatt submitted, interalia, that the petitioners can not be allowed to expand the scope of the revision beyond the order passed by this court in SCA No.880/73. Mr.Bhatt submitted that this court in the aforesaid judgment had expressly negatived all other contentions. However, only on account of certain heirs and legal representatives being not joined as party at the time when the revision came to be decided by the tribunal being heirs and legal representatives of tenant Ramji Vala and Anand Mava direction was given to reconsider the matter and the other opponents whose lands were also being taken in Block Nos 1 & 2 were required to be heard only in the event of the tribunal coming to conclusion of modifying the order of the land comprising of Block Nos 1 & 2. He, therefore, submitted that such persons other than those who are heirs and legal representatives of Ramji Vala and Anand Mava can not be allowed to challenge the decision when the tribunal after remand has confirmed the allotment of land which was made pursuant to earlier decision. Mr.Bhatt submitted that therefore at the most the petitioners can challenge the allotment of land of Block Nos 1 & 2 so far as they relate to heirs and legal representatives of Anand Mava and Ramji Vala and it can not be reconsidered for the other petitioners. Mr.Bhatt submitted that the tribunal found that the heirs and legal representatives of Anand Mava and Ramji Vala were very much there on the record and as a consequence thereof the tribunal found it proper not to alter or modify the view taken in its earlier decision. Therefore, he submitted that the matter does not call for interference by this court in exercise of powers under Article 227 of the Constitution of India.

6. So far as the calculations made by Mr.Shah regarding the holding of land by the petitioners and more particularly for the land of Devji Vala admeasuring 17 acres 1 guntha is concerned during the course of hearing

and after the matter was adjourned to another day since the court's time was over. Mr.Bhatt has tendered affidavit on 8.4.03 on behalf of respondent No.1 stating that the land received by the respondent No.1 S.H.Vala from Devji Vala Gedia is not admeasuring 17 acres 1 guntha but is admeasuring 12 acre 17 gunthas and he has further stated that after the judgment of the tribunal the heirs of Devji Vala Gedia have initiated proceedings before the Mamalatdar for getting back the land as per the directions of the tribunal because in the directions of the tribunal the respondent No.1 is not entitled to retain anyother land than the land allotted by the tribunal. In the said affidavit it has been submitted that paras 1 & 2 that the points are covered by the previous judgment of this court rendered in SCA No.880/73 and it has been further stated at para 4 of the said affidavit as under:

"I do hereby state and give solemn undertaking to this Honourable Court that on landlords being put in possession of lands as per the allotment made by the tribunal I will return and restore possession of the entire land to heirs and legal representatives of Devji Vela Gedia which was allotted to me from the holding of Devji Vela Gedia previously."

Therefore, Mr.Bhatt submitted that when the tribunal has also observed declaring that the girasdar would not be entitled to continue in possession of the land except the land allotted by the mamalatdar and the land bearing S.No.169 admeasuring 8 acres 29 gunthas from Aannd Devji the respondent No.1 will have to surrender the land and the respondent No.1 is agreeable for such purpose and therefore Mr.Bhatt submitted that the said declaration made in the affidavit be accepted by the court and the matter be decided accordingly. He further submitted that if the land which is received by respondent No.1 girasadar from Devji Vela Gedia admeasuring 12 acres 17 gunthas is taken out then in that case no fault can be found with the order passed by the tribunal because the total land would not exceed 84 acres and therefore he submitted that while considering the matter the court may modulate the relief accordingly.

7. It is pertinent to note that when the matter was heard the learned counsel for petitioner has objected for filing of affidavit on 8.4.03 on behalf of respondent No.1 contending that the said affidavit can not be taken into consideration at the last moment and the petition is of 1983 and was admitted as back as on 7.1.1983 and the

interim relief was granted. Therefore, the respondent No.1 can not be allowed to file affidavit after a period of about 20 years that too during the course of hearing.

8. Considering the above, it appears and rather it has come on record by way of evidence given by the petitioners in this petition at para 10 and it is also admitted by the respondent No.1-girasadar in the affidavit in reply which is tendered to the court that the land is allotted to girasadar from Devji Vala Gedia. However, what is disputed is that the land actually allotted to him is not 17 acre 1 guntha but is 12 acre 17 gunthas. It is submitted by the girasadar that he is ready to surrender the said land to the heirs and legal representatives of Devji Vala Gedia and therefore it appears that the land was allotted by the order of Mamalatdar to respondent No.1-girasadar probably by surrendering or otherwise from Devji Vala Gedia and as such it results into undisputed position. The only dispute between the petitioners and the respondent No.1 is regarding the measurement as to whether 17 acres and 1 guntha or 12 acre 17 gunthas. I am not examining the aspect regarding the actual measurement but the matter can be considered on the basis that the respondent No.1 was allotted the land admeasuring 12 acre 17 gunthas under the Act from Devji Vala Gedia since to that extent the position is undisputed. It is further the admitted position that the heirs and legal representatives of Devji Vela Gedia have not challenged the decision of the tribunal before this court.

9. The statement coming from respondent No.1 through the affidavit that the heirs and legal representatives of Devji Vela Gedia have applied to the Mamalatdar for receiving the possession back is at the last moment and that too during the course of final hearing. Mr.Shah is right to some extent in submitting that when the matter is pending for 20 years before this court and when no such affidavit has been filed the party should not be allowed to tender the affidavit during the course of hearing, more particularly, when the same is after a period of about 20 years of litigation. I am not examining said aspects in detail because even if to some extent the affidavit in reply filed by the respondent No.1-girasadar is looked into, it is apparent that the land was allotted to him from Devji Vela Gedia admeasuring 17 acres 1 guntha or 12 acre 17 gunthas. If such land of Devji Vela Gedia is taken into consideration it does not primafacie appear that the holding of respondent No.1-girasadar would exceed 84 acres which is the maximum limit provided under the Act if the order of

the tribunal is maintained. A perusal of the order passed by the tribunal shows that there is no whisper regarding the land allotted to respondent No.1-girasadar from Devji Vela Gedia nor it appears to have been taken into consideration that to what extent the adjustment of said land can be made or said land can be considered for the purpose of taking balance of land from the petitioners. No material is placed either by the petitioners or by the respondent No.1 to show that the allotment of land or receiving of land by respondent No.1-girasadar from the tenant Devji Vela Gedia was considered by the tribunal. Therefore, in that view of the matter it appears that if the allotment made pursuant to the judgment of the tribunal so far as it relates to Block Nos 1 & 2 and more particularly including the land of heirs and legal representatives of Lala Sava and Ramji Vela is considered, the total land allotted to respondent No.1-Girasdar shall exceed 84 acres.

10. It is admitted by Mr.Bhatt that the respondent No.1-girasdar as per the provisions of the Act would not be entitled to land exceeding 84 acres. However, submission made on behalf of respondent No.1-girasdar was that no such contention was raised before the tribunal and such questions of facts can not be allowed to be raised in a petition under Article 227 of the Constitution of India. Normally, it is true that this court while exercising power under Article 227 of the Constitution of India would not permit the party to raise new contention which is not raised before the lower authority. However, in my view aforesaid aspect goes to the root of the matter in as much as the respondent No.1 under no circumstances would be entitled to allotment of land exceeding 84 acres. If the allotment is maintained as made by the tribunal, the consequent effect would be that the respondent No.1 would be entitled to have the land of Block Nos 1 & 2 which would enable him to get the land exceeding total 84 acres. In my view, such an important aspect of the matter which goes to the root and which is obligatory on the part of the tribunal to consider should not have been missed by the tribunal. If the order of the tribunal is maintained for the purpose of allotment of land to respondent No.1-girasdar the consequence would be that the land shall stand allotted exceeding 84 acres which in my view would frustrate the basic purpose of land reforms and it would also run counter to the statutory limits prescribed under the Act for entitlement by the girasdar.

11. An attempt was made by Mr.Bhatt to submit that as

a consequence the order passed by the tribunal the respondent No.1 will have to surrender the land received by him from Devraj Vala and more particularly when the application is pending before the Mamalatdar. The averments made in the petition at para 10 are regarding the allotment of land by Devraj Vela under his consent and the same is surrendered voluntarily and is handed over whereas the stand in the affidavit which is filed after a period of about 20 years on behalf of respondent No.1 is otherwise. If the land is voluntarily surrendered by the tenant possibly there may not be any question of returning the same to the said tenant. Moreover, it is not brought to the notice of this court that the heirs and legal representatives of Devraj Vela have challenged the decision of the Mamalatdar or before any other authority for taking possession of the land by respondent No.1-Girasdar. Therefore, if the land is voluntarily surrendered and when no challenge is made, the tribunal could have considered the said land while computing the total limit of holding by the respondent No.1 at the time when it had to reconsider the matter for the land forming Block Nos 1 & 2 and more particularly the land of the petitioners therein. I am not expressing any final opinion on the said aspects and it will be for the tribunal to reexamine the matter, but one fact is apparent that the holding of the respondent No.1 for the land of Devraj Vela is not at all considered and is rather ignored by the tribunal while considering the matter after remand order of this court. In my view, if a glaring error is demonstrated by showing that if such missing aspect is considered the final outcome of the matter would be otherwise and when sufficient material is produced or it transpires from the record in furtherance to the said contention, this court would be justified in exercising its power under Article 227 of the Constitution of India. Any such glaring error by the lower authority which not only results into great injustice but also results into exceeding in exercise of jurisdiction and thereby to frustrate the land reforms, if not entertained and interfered by this court under Article 227 of the Constitution of India, it may further perpetuate illegalities and would enable the beneficiary of the order to take undue advantage. Hence, I find that the facts and circumstances of the present case call for interference by this court under Article 227 of the Constitution of India.

12. I would have examined the matter with a view to put an end to the dispute which is pending since last 50 years, but on account of affidavit being filed at the last moment during the course of hearing and further

question also arises for examination of record as to whether the heirs and legal representatives of Devraj Vela have moved any application before the Mamalatdar or they have voluntarily surrendered the land for all times can only be examined by the tribunal by calling for record and proceedings from the Mamalatdar. However, in view of the aforesaid declaration made by Mr.Shah on behalf of petitioners if the land is proportionately allotted from the holdings of the petitioners subject to minimum limit of economic holding after taking into consideration the land received by respondent No.1 from Devraj Vela, no much detailed exercise would be required to be undertaken before the tribunal.

13. In view of the aforesaid discussion the judgment and order dated 4.10.1982 passed by the tribunal in Revision Application being Ten.BR.89/77 is quashed and set aside so far as it related to the allotment of land belonging to the petitioners forming part of Block Nos 1 & 2. It is further directed that the tribunal shall examine the matter for the purpose of computation of land received by the respondent No.1-girasdar from Devraj Vala and after including the said land, the balance of land in proportion shall be considered for the purpose of allotment by the tribunal to respondent No.1 subject to not reducing the limit of economic holding by each of the concerned original tenants of whom the present petitioners are the heirs and legal representatives.

14. The tribunal shall reconsider and rehear the revision as early as possible and in any case within a period of six months from the date of receipt of writ of this court.

15. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

10.4.03 (JAYANT PATEL,J)